(18,863.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 233.

ELMIRA KNEPPER

vs.

JOHN A. SANDS.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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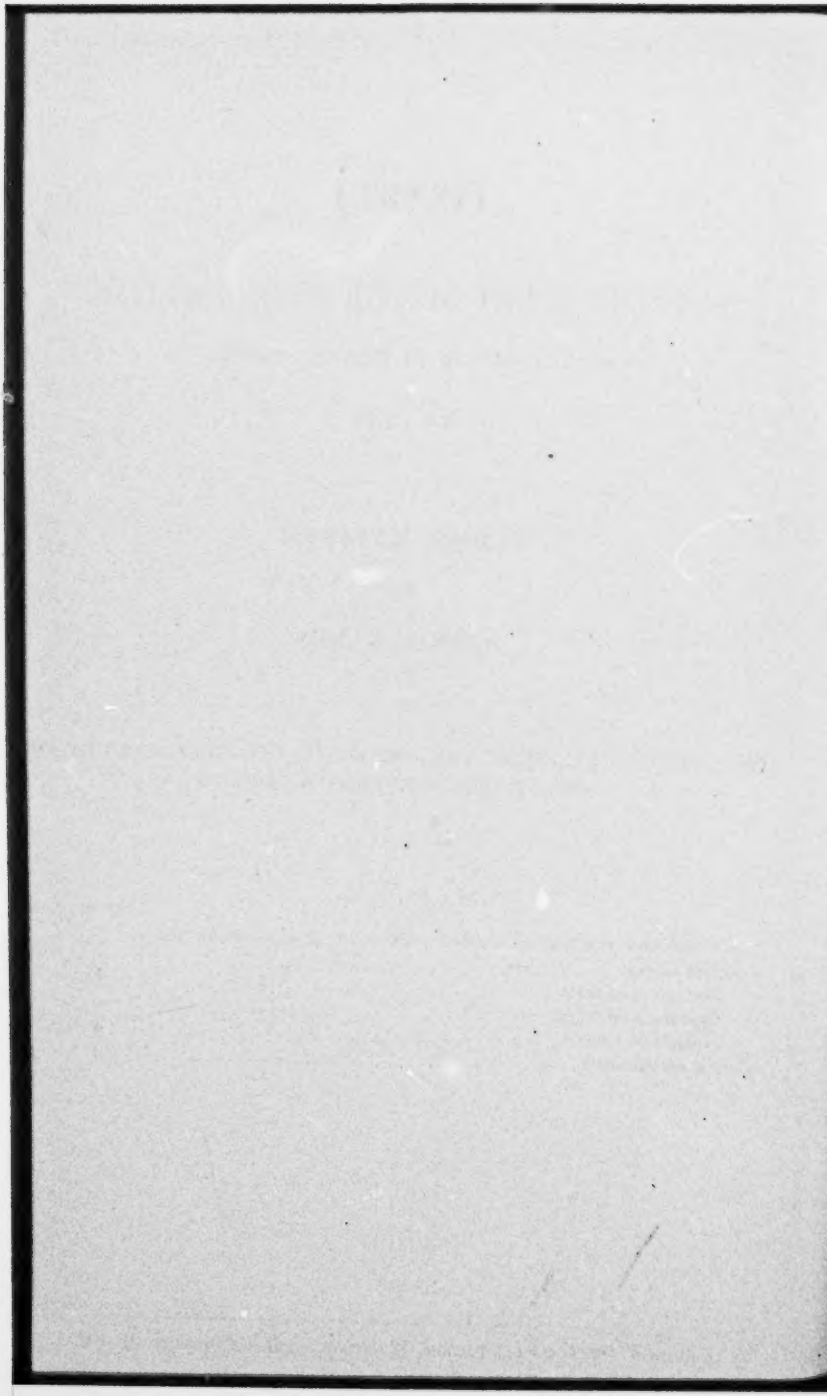

1 United States Circuit Court of Appeals, Eighth Circuit.

ELMIRA KNEPPER, Appellant,
vs.
JOHN A. SANDS, Appellee.
} Appeal from the Circuit Court of the United States for the Northern District of Iowa.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, Missouri on the 25th day of February, 1903, certifies that from the record on file in the above entitled cause, which is pending in this court on an appeal duly taken to review a decree rendered in said action in favor of John A. Sands, the appellee, and is undetermined, the following facts are made to appear:

That by an act of Congress approved May 12, 1864 it was "enacted in the Senate and House of Representatives of the United States of America, * * * that there be, and is hereby granted, to the State of Iowa, for the purpose of aiding in the construction of a railroad from Sioux City, in said State, to the south line of the State of Minnesota, at such points as the said State of Iowa may select between the Big Sioux and the West fork of the Des Moines river; also to said State for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction, by the most practicable route on or near the forty-third parallel of north latitude until it shall intercept the said road running from Sioux City to the Minnesota State line, in the county of O'Brien in said State, every alternate section of land designated by odd numbers for ten sections in width on each side of said road, but, in case
2 it shall appear that the United States have, when the lines or routes of said roads are definitely located, sold any section or part thereof granted as aforesaid or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement, or pre-emption has attached, as aforesaid, which lands thus indicated by odd numbers and sections, by the direction of the Secretary of the Interior, shall be held by the State of Iowa for the uses and purposes aforesaid: Provided, that the lands so selected shall in no case be located more than twenty miles from the lines of said roads: Provided further, that any and all lands heretofore reserved to the United States by an act of Congress, or in any manner by competent authority for the pur-

pose of aiding in any object of internal improvement or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the routes of said roads through such reserved lands, in which case the right of way shall be granted, subject to the approval of the President of the United States.

* * * * * * *

SEC. 4. And be it further enacted, That the lands hereby granted shall be subject to the disposal of the legislature of Iowa, for the purposes aforesaid, and no other. And the said railroads shall be, and remain, public highways for the use of the Government of the United States.

SEC. 4. And be it further enacted, That the lands hereby granted shall be disposed of by said State, for the purposes aforesaid only, and in manner following, namely: When the governor of said State shall certify to the Secretary of the Interior that any section of ten consecutive miles of either of said roads is completed in a 3 good, substantial, and workmanlike manner, as a first-class railroad, then the Secretary of the Interior shall issue to the State, patents for one hundred sections of land for the benefit of the road having completed the ten miles as aforesaid. When the governor of said State shall certify that another section of ten consecutive miles shall have been completed as aforesaid, then the Secretary of the Interior shall issue patents to said State in like manner, for a like number; and when certificates of the completion of additional sections of ten consecutive miles of either of said roads are, from time to time, made as aforesaid, additional sections of land shall be patented as aforesaid, until said roads, or either of them, are completed, when the whole of the lands hereby granted shall be patented, to the State for the uses aforesaid, and none other, provided, that if the said McGregor Western Railroad Company, or assigns shall fail to complete at least twenty miles of its said road during each and every year from the date of its acceptance of the grant provided for in this act, then the State may resume said grant, and so dispose of the same as to secure the completion of a road on said line and upon such terms, within such time as the State shall determine; provided further, that if the said roads are not completed within ten years from their several acceptance of this grant, the said lands hereby granted and not patented shall revert to the State of Iowa for the purpose of securing the completion of the said roads within such time, not to exceed five years, and upon such terms as the State shall determine; and provided further, that said lands shall not in any manner be disposed of or incumbered except as the same are patented under the provisions of this act, and should the State fail to complete said roads within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

SEC. 5. And be it further enacted, That as soon as the governor of said State of Iowa shall file or cause to be filed with the Secretary

of the Interior maps designating the routes of said roads, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act."

* * * * * * *

4 That on April 3, 1866 the State of Iowa accepted said grant and on the same day, by appropriate legislative action, conferred that part of the grant made in aid of the construction of a railroad from Sioux City to the south line of the State of Minnesota, upon the Sioux City & St. Paul Railroad Company, a corporation duly organized and existing under and by virtue of the laws of said State, said grant being made upon the terms, conditions and restrictions contained in the aforesaid act of Congress; that the said railroad company accepted said grant from the State and entered upon the construction of its road but only completed five sections of ten miles each, extending from the Minnesota State line southward to the town of Le Mars and received from the State of Iowa the amount of land it was entitled to by reason of the construction of such part of its road; that in a message to the legislature of the State of Iowa, delivered in January 1882, the governor of the State directed the attention of the legislature to the fact that the railroad company aforesaid had failed to complete its road in accordance with the terms of the grant and advised the legislature of his refusal to convey any more lands to said railroad company because it had received all the land that it was entitled to and recommended that appropriate legislative action be taken; that thereafter, on March 16, 1882, the following act was adopted by the legislature of the State of Iowa, which was duly approved by the governor:

"An act to resume all the lands and rights conferred upon the Sioux City & St. Paul Railroad Company by or under an act of Congress approved May 12, A. D. 1864, to lands not heretofore earned by said company.

Whereas, by an act of Congress approved May 12, 1864, entitled, 'An act for a grant of lands to the State of Iowa, in alternate sections to aid in the construction of a railroad in said State,' certain lands were granted to the State of Iowa for the purpose of aiding in the construction of a railroad from Sioux City in said State, to the south line of Minnesota, at such point as the said State might select between the Big Sioux and the West fork of the Des Moines river, which grant was made to and accepted by, the State of Iowa

5 upon the conditions, restrictions and qualifications therein named, and

Whereas, by an act of the General Assembly of the State of Iowa, approved April 3, 1866, so much of the lands, interests, rights, powers and privileges as were or might be conferred in pursuance of said acts of Congress, to aid in the construction of the aforesaid road, were disposed of, granted and conferred upon the Sioux City & St. Paul Railroad Company, and

Whereas, said Sioux City & St. Paul Company, duly accepted said grant on the 20th day of September, A. D., 1866, but has failed to complete or cause to be completed any road on the line adopted therefor, from Sioux City to Le Mars, in said State of Iowa, or any road in lieu thereof.

Be it enacted by the General Assembly of the State of Iowa:

SEC. 1. That all lands, and all rights to lands, granted or intended to be granted to the Sioux City & St. Paul Railroad Company by the said acts of Congress and of the General Assembly of the State of Iowa, which have not been earned by said railroad company by a compliance with the conditions of said grant, be, and the same are hereby absolutely and entirely resumed by the State of Iowa, and that the same be and are absolutely vested in said State as if the same had never been granted to said railroad company.

SEC. 2. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and the Sioux City Journal newspaper- published in the State of Iowa.

Approved March 16, 1882."

That thereafter by an act of the legislature of the State of Iowa, which took effect April 2, 1884, the State relinquished to the United States all of its right, title and interest in the lands pertaining to the grant in aid of the Sioux City & St. Paul Railroad Company, which had been declared vested in the State by virtue of the act aforesaid, approved on March 16, 1882, and authorized the governor of the State to certify, to the Secretary of the Interior, a list of
6 all lands which had been heretofore patented to the State to aid in the construction of the Sioux City & St. Paul Railroad Company, which lands had not been earned and had been declared forfeited to the State; but said act contained the provision "that nothing in this (act) contained shall be construed to apply to lands situated in counties of Dickinson and O'Brien."

It further appears that prior to the adoption of the act of March 16, 1882 the State of Iowa, acting through its executive officers, had caused a computation to be made of the lands to which the Sioux City & St. Paul Railroad Company was entitled under the grant aforesaid and of the lands patented to the State on that account and of the lands actually conveyed by the State to said company and also caused a computation to be made of the lands pertaining to the grant and held by the State, which had neither been conveyed to the railroad company or earned by it and that upon such computation it appeared that said railroad company had received conveyances from the State for 322,412–81/100 acres of land, which was all that it was entitled to according to the terms of the grant and that the State still held the legal title to 85,457–41/100 acres of land pertaining to said grant, no part of which had at that time been earned by the railroad company or conveyed to it or has ever since been earned; that the last named quantity of land so unearned and unconveyed consisted in part of the tract of land in controversy in

this action, to-wit, section 9, township 95, north of range 42, west of the fifth principal meridian, situated in O'Brien county, Iowa.

It further appears that the tract of land in controversy remained open and unoccupied until about one year subsequent to the passage of what is termed the relinquishment act aforesaid of April 2, 1884, at which time it was settled upon by John A. Sands, the appellee, who erected a house and made improvements thereon of the value of $1750., with a view of establishing a homestead in accordance with the laws of the United States and who has ever since resided upon said land, claiming it as a homestead; that he made an application to the proper land office to enter it as a homestead,
7 some time in the year 1884 but his application was rejected, and that he renewed such application on March 10, 1896, after the Secretary of the Interior, in a published circular of date November 18, 1895, had declared the land in controversy, and other like land, subject to disposal by the Land Department of the United States.

It further appears that when his last application to enter the land was made, his claim was contested in the local land office by Elmira Knepper, the appellant in this case; that said Elmira Knepper asserted a right to the land in virtue of a purchase of the same by her from the Sioux City & St. Paul Railroad Company, which was made on June 21, 1887, and in virtue of the provisions of the fourth section of the act of Congress making provision for the adjustment of railroad land grants and other purposes, which was approved March 3, 1887 (*vide* 24 St. 556, c. 376); that the said Elmira Knepper had never, at any time, resided upon the land in controversy or cultivated the same or in any manner attempted to comply with the homestead laws of the United States for the purpose of obtaining a title to it thereunder; that the controversy thus inaugurated as aforesaid between the parties to this action, was tried and determined before the register and receiver of the local land office and resulted in a finding, by such officer, that John A. Sands, the appellee, by virtue of his settlement upon the land and continued residence thereon and cultivation thereof and his full compliance with the homestead laws of the United States, was entitled to a patent to said lands from the United States; that an appeal was taken from such decision by Elmira Knepper to the Commissioner of the General Land Office, who, on July 20, 1899, likewise decided that John A. Sands, the appellee, was entitled to a patent for said land; that a further appeal was taken, by Elmira Knepper, to the Secretary of the Interior, who, on April 24, 1900, reversed the decision of the register and receiver and also the decision of the Commissioner of the General Land Office and thereupon rejected the application of said Sands to enter the land as a homestead; that at the time the bill of complaint was filed in the present case by John A. Sands against Elmira Knepper, the officers of the General
8 Land Office, acting in accordance with the decision of the Secretary of the Interior, were about to issue or had already issued a patent for the land in controvey to the said Elmira Knep-

per, solely in virtue of her alleged purchase of the land from the Sioux City & St. Paul Railroad Company on June 21, 1887, and in virtue of the fourth section of the adjustment act of March 3, 1887.

It further appears from the bill of complaint that John A. Sands, the appellee, alleged that the action aforesaid, if taken, would be unlawful and contrary to law, wherefore he prayed that the Commissioner of the General Land Office should be required to accept his proofs showing settlement upon and continuous cultivation of the land for the period of five years or more and that the patent to said land allowed to the defendant, Elmira Knepper, be either declared null and void or for a decree declaring that the defendant holds the legal title in trust for the appellee.

And the said circuit court of appeals for the eighth circuit further certifies that the following questions of law, among others, arise and are presented by the assignment of errors in this case; that the decision thereof is indispensable to a correct decision of the cause; and that to that end it desires the instruction of the Supreme Court upon the following questions and propositions of law, to-wit:

First. In view of the provisions of the act of Congress of May 12, 1864, by virtue of which the land in controversy was granted to the State of Iowa, did the action which was subsequently taken in manner and form aforesaid, by the governor and legislature of the State of Iowa, operate as a final adjustment of the grant so far as the Sioux City & St. Paul Railroad Company was concerned and by virtue of its being so adjusted, exempt or except the grant in question from the provisions of the adjustment act of March 3, 1887?

Second. In view of the terms of the granting act of May 12, 1864, and the action subsequently taken in manner and form aforesaid by the State of Iowa, acting through its governor and legislature, can Elmira Knepper, the appellant, be esteemed a purchaser in good faith or a *bona fide* purchaser of the land in controversy, within the meaning of the fourth section of the adjustment act of
9 March 3, 1887, as against John A. Sands, the appellee, who was in the open possession of the land in controversy and had erected valuable improvements thereon in manner and form aforesaid when said purchase was made?

In witness whereof the undersigned judges, holding the said United States circuit court of appeals for the eighth circuit, have hereunto set their hands this 25th day of February, A. D., 1903, at St. Louis, Missouri, and ordered that the foregoing certificate be filed in said United States circuit court of appeals and by the clerk of said court duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
AMOS M. THAYER,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

10 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordon, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of Elmira Knepper, appellant, *vs.* John A. Sands, appellee, No. 1751, December term, A. D. 1902, was duly filed and entered of record in my office by order of said circuit court of appeals and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this twenty-fifth day of February, A. D. 1903.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

11 [Endorsed:] U. S. circuit court of appeals eighth circuit. December term, 1902 No. 1751 Elmira Knepper, appellant, *vs.* John A. Sands. Certificate of questions to the Supreme Court of the United States. Filed Feb. 25 1903 John D. Jordan, clerk.

Endorsed on cover: (Certificate.) File No. 18,863. U. S. C. C. of appeals, 8th circuit. Term No. 233. Elmira Knepper *vs.* John A. Sands. Filed March 13", 1903.